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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,006	03/23/2004	Robert C. Berfield	1-771	2819

7590 02/24/2005

Hooker & Habib, P.C.  
Suite 304  
100 Chestnut Street  
Harrisburg, PA 17101

EXAMINER
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WUJCIAK, ALFRED J

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/807,006

Applicant(s)

BERFIELD, ROBERT C.

Examiner

Alfred Joseph Wujciak III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 3/23/04 and 11 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 10-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5,6,8 and 9 is/are rejected.
- 7) ☒ Claim(s) 2-4 and 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/23/04.
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. 1.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This is the first Office Action for the serial number 10/807,006, HOSE HOLDER, filed on 3/23/04.

This office action is responsive to the second Preliminary Amendment that was filed on 2/11/05.

#### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-9, drawn to combination of hose and holder, classified in class 248, subclass 80.
- II. Claims 10-14, drawn to subcombination, classified in class 248, subclass 309.1.
- III. Claim 15, drawn to method, classified in class 264, subclass 508.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination can be used with a rack or bracket for supporting the hose. The subcombination has separate utility such as holder for supporting golf club on the ground.

Inventions I and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product

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as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product can be used as storage for supporting rope or cable.

During a telephone conversation with Thomas Hooker on 2/11/05 and 2/17/05 a provisional election was made with traverse to prosecute the invention of I, claims 1-9. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-15 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9, line 1, "The tool" is indefinite and it should be changed to ---The holder--- for clarification.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 5-6 are rejected under 35 U.S.C. 102(e) as being anticipated by

US Patent # 6,700,064 to Aoki et al.

Aoki et al. teaches a corrugated hose (4) and a holder (figure 2) comprising two spaced apart support members (18), each member mounted on a support (5,9) and including at least one rib (24) located outwardly from the support and facing the rib on the other member. The corrugated hose includes valleys and an elastically bowed portion and side sections located to either side of the bowed portion. The side sections are positioned between the ribs (figure 1). The side sections being biased away from each other by the bowed portion so that one valley on each side section engages one rib on each member to support the hose. The ribs are generally horizontal and the hose extends generally vertically (figure 1). The ribs are generally vertical and the hose extends generally horizontal (since the holder is mounted on support (5,9) that has a pivot support, it can be swiveled to either horizontal or vertical direction which will change the direction of ribs and hose in vertical or horizontal).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aoki et al. in view of US Patent # 6,502,276 to Iversen.

Aoki et al. teaches the members but fails to teach the members are secured to parts of a vacuum cleaner body. Iverson teaches the vacuum cleaner body (figure 1). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used Aoki et al.'s members on the vacuum cleaner body as taught by Iversen to provide a swivel support for supporting hose on the vacuum cleaner body.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aoki et al. in view of US Patent # 6,446,915 to Ismert.

Aoki et al. teaches the members but fails to teach the members comprise a one piece of integral molded plastic body. Ismert teaches the member (22) is made of molded plastic body (col. 5, lines 58-59). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified Aoki et al.'s member with molded plastic body as taught by Ismert to reduce cost in manufacturing process.

#### ***Allowable Subject Matter***

Claims 2-4 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In regard to claims 2-4, the prior art fails to teach wherein each rib includes a lip. In regards to claim 7, the prior art fails to teach the support members are mounted on the wall.

*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US Patent # 6,619,596 to Caine et al.

US Patent # 2,955,790 to Sylvester

US Patent # 4,606,735 to Wilder et al.

US Patent # 4,406,434 to Schneckloth

US Patent # 3,747,166 to Eross

Caine et al., Sylvester, Wilder et al., Schneckloth and Eross teach holder/clamp for supporting hose/tube.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Joseph Wujciak III whose telephone number is (703) 306-5994. The examiner can normally be reached on 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A Braun can be reached on 703 308 2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alfred Joseph Wujciak III

Examiner

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A. 

2/17/05